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JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER, ELMER A. WILCOX, WILLIAM G. HALE

FROM WILLIAM G. HALE.

BURGLARY.

People v. Kelly. Ill. 113 N. E. 926. *Felonious intent.* Evidence that the accused entered a store in a long line of persons waiting to buy circus tickets, but not showing that he bought tickets or any other article, and that while in the store in the line that was passing out, he picked the pockets of the man in front of him, is insufficient on which to convict of burglary since it fails to show, beyond a reasonable doubt, that he *entered* with such felonious intent. "He may have taken advantage of the opportunity," the court says, "to commit larceny, but his presence in the store, is as consistent with his innocence as with his guilt of the criminal intent at the time of his entry."

CONFESSIONS.

People v. Stielow. 161 N. Y. S. 599. The mental condition of the defendant may be shown, even though insanity is not interposed as a defense, as bearing upon the weight to be attached to an alleged confession of a crime, but such weight goes rather to the weight of the confession than to its admissibility.

A promise of immunity by a detective without the express or implied authority of the district attorney does not render a confession involuntary. Newly discovered in evidence as to the way in which the confession was obtained was held insufficient to justify a new trial.

INSTRUCTIONS.

State v. Totten. Ind. 114 N. E. 82. *Repetition.* Although not to be commended, the practice of repeating certain vital instructions, e. g., that the guilt of the defendant must be proven beyond a reasonable doubt, does not necessarily constitute reversible error.

LARCENY.

People v. Csontos. Ill. 114 N. E. 123. *Proof of Ownership.* It was charged in this case that the stolen property—a diamond ring—was the property of Howard Hammond. There was testimony to the effect that his mother had given it to him, actually delivering it to him, but that he later handed it back and the mother had it reset and wore it, but that "while the ring was his (the son's) he was not to have it until he arrived at manhood." It was held that under (technical) laws as to the vesting of title to personal property by way of gift, the title to this ring was not in the son and hence the allegation of ownership was not sustained. Cooke and Farmer, J. J., dissenting.

RECEIVING STOLEN GOODS.

People v. Struble. Ill. 113 N. E. 938. *Proof of ownership.* In a prosecution for receiving stolen property alleged to have been owned by a corporation, held, (1) that ownership in the corporation was a material averment, and its existence must be proved as alleged and (2) testimony of the bookkeeper

and cashier of the alleged company that "they" conducted "their" business "as a corporation" was insufficient to show corporate existence. Carter, J., dissenting.

The following comment on *People v. Krittenbrink,* 269 Ill. 244, is equally applicable to *People v. Struble.* (11 Ill. Law Rev. 321): "It was alleged in the indictment [in the *Krittenbrink* case] that the property stolen was the property of Parke, Davis & Co., a corporation. The case was reversed on the ground that there was no competent proof that Parke, Davis & Co. was a corporation, and since ownership of the stolen property must be proved, the state's case must fail. The law is well settled that proof of ownership is an essential part of the State's case either on an indictment for stealing or for receiving stolen property. Why this ancient rule should be adhered to is not plain. At most it can only serve to help identify the property which may easily be otherwise sufficiently identified to prevent prosecution again for the same offense and to advise the defendant of the act of which he is accused. As to this case, it should be noted that a witness did testify that Parke, Davis & Co. was the owner, and that it was a corporation, but since no facts were testified to by the witness on which his opinion was based, the proof was held insufficient. Since it was really immaterial whether Parke, Davis & Co. was a corporation, a partnership, or a private individual doing business under that name, so far as the power to own property was concerned, and since the name testified to would sufficiently designate the owner for purposes of identification in case of another prosecution for the same offense, it would seem that the court might well have considered the proof of ownership sufficient for the purposes of this case, dispensing with more formal proof that it was one as distinguished from the other. The proof offered is more definite, as a practical matter, than if it had been alleged and proved that the property belonged to John Smith."

It may be added, however, that since the Illinois court has so frequently and explicitly declared itself on this question, nothing short of gross carelessness or inexcusable ignorance can result in a further presentation of the question to the Supreme Court of this State.

STATUTORY CONSTRUCTION.

King v. State. Ind. 114 N. E. 34. *Sale of Cocaine.* An act passed in 1911 made it unlawful to sell or give away an "cocaine, alpha or beta eucaine," etc. This act was amended in 1913 by including certain other drugs in its scope, but contained an error in punctuation in omitting the comma before the word "alpha." There is no such drug as "cocaine alpha and beta eucaine." The defendant was indicted for the illegal sale of cocaine. *Held,* that the error in punctuation would "not prevent a proper construction of the act in which it occurs."

FROM CHESTER G. VERNIER.

ACCOMPLICE.

State v. Edlund. Ore. 160 Pac. 534. Is purchaser of intoxicating liquor an accomplice in unlawful sale? L. O. L., sec. 2370, declares that all persons concerned in the commission of a crime, whether they directly commit the crime or aid and abet in its commission, are principals, while section 1540 declares that a conviction cannot be had upon the testimony of an accomplice unless corroborated, and that evidence merely showing the commission of the crime or

the circumstances thereof is not sufficient. Prohibition Act (Laws 1915, pp. 151, 155) sections 5 and 9, denounce the sale or barter of intoxicating liquors, while section 7 declares that it shall be unlawful for any person to solicit, take, or receive any order for intoxicating liquors, or to make any contract for the sale of any intoxicating liquors except where the sale is permitted. There was no provision for the punishment of persons purchasing intoxicating liquors. *Held*, that neither a purchaser nor his agent in effecting a purchase of intoxicating liquors is an accomplice of the seller, and a conviction may be had on the uncorroborated testimony of either; an "accomplice" being a responsible person whose willful participation in the commission of a crime renders him liable to conviction, though of course the agent of the seller would be an accomplice.

EVIDENCE.

Maxwell v. State. Ga. 90 S. E. 279. Admissibility of simulation of insanity. The conduct of one accused of crime, indicating a consciousness of guilt, is admissible against him on trial for such crime. Where one charged with murder, and confined in jail awaiting his trial, conducts himself for the purpose of inducing the belief that he is insane, such simulation of insanity is competent evidence, where on the trial he set up in his statement that he killed the decedent to prevent the debauchery of his wife.

INTOXICATING LIQUOR.

State v. Hemrich. Wash. 161 Pac. 78. Constitutionality of prohibition of non-intoxicating liquors. In the exercise of the police power, the Legislature or the people acting in a legislative capacity may lawfully prohibit the sale of non-intoxicating beverages, and may conclusively define such beverages as intoxicating liquors whenever that course has any reasonable relation to the accomplishment of the dominant purpose of the act.

Butler v. State. Okla. 159 Pac. 1090. Effect of statutory presumption. Under section 6, c. 26, Sess. Laws 1913, declaring that the keeping in excess of a certain amount of intoxicating liquors "shall be 'prima facie evidence' of an intention to convey, sell, or otherwise dispose of such liquors," it is error to charge that "the keeping in excess of one gallon of spirituous liquor constitutes 'prima facie evidence' of intent to convey, sell, or otherwise dispose of such liquor, and places upon the defendant the burden of raising a reasonable doubt of his guilty intent to so convey, sell, or dispose of such liquor," since the statute only means to take such evidence competent and sufficient to establish the unlawful intent, unless rebutted or the contrary proved; yet it does not make it obligatory upon the jury to convict after the presentation of such proof. Whether or not such evidence is sufficient to overcome the presumption of innocence of a defendant, and to establish his guilt beyond a reasonable doubt, when all the evidence, including the presumptions is considered, is for the determination of the jury.

SELF-DEFENSE.

Wiley v. State. Okla. 161 Pac. 61. Where the only eyewitness to a homicide testified that the deceased attempted to bribe the accused to swear falsely, and the accused resented the offer by using very violent and insulting language toward the deceased, and that the deceased thereupon became enraged and attacked the accused with an open knife, and the accused then shot the deceased

in defense of his person, and where the evidence showed no previous hostility, but, on the contrary, that prior to the fatal difficulty the men had been friends, held, that it was prejudicial error for the court to instruct the jury, under this state of facts, to the effect that, if the accused addressed the insulting language towards the deceased for the purpose of provoking a difficulty, and doing the deceased bodily harm, he thereby forfeited his right of self-defense, for the reason that the accused had the right to resent this offer to bribe him, and to resent it in no uncertain language, and this instruction suggests a purpose on the part of the accused for using the insulting language which is not suggested by nor borne out by the evidence, and in effect denies to the accused the plea and right of self-defense which the evidence on behalf of the accused tended to establish.

TRIAL.

State v. Shuman. S. Car. 90 S. E. 596. Coercing agreement by jury. A judge has no right to threaten or intimidate a jury or unduly detain them in order to affect their deliberations, and there should be nothing in his intercourse with the jury having the least appearance of duress or coercion.

In a homicide trial, where the case was submitted at 5 o'clock and the jury were in the jury room until 11 o'clock next morning, when they rendered a verdict of guilty, an instruction, concluding with a statement that if a jury had found a mistrial, the court would have sent them to jail, and intimating that the judge would keep the jury three weeks if they did not agree, was error, prejudicial to accused.

WIFE BEATING.

State v. Collins. Dela. 99 Atl. 87. Meaning of wife under statute. Under Rev. Code 1915, section 4712, providing that whoever, being the husband of any woman, shall beat her, shall be guilty of a misdemeanor, the prosecuting witness and accused between whom a marriage had been solemnized and who had lived together as husband and wife, holding out as such, were "husband and wife" within the statute, though there was at the time of the alleged assault a pre-existing marriage between the accused and another woman.